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University of Baltimore School of Law Honor Court Decisions

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entitled "Marijuana and the Law in Maryland." It featured interviews with Judge Carl Bacharach, a state district court judge in Baltimore, and Joseph Gallen, Baltimore County's chief of police, as well as a "point-counterpoint" segment which pitted state Senator Clarence Mitchell, an advocate of marijuana decriminalization, against state Delegate Steven Sklar, a foe of decriminalization.

Also receiving an award was *The Forum*, a university-funded and student-edited magazine which publishes articles of interest to the Maryland legal community. The magazine, in competition with law school publications nationwide, won an "Honorable Mention" for its articles on substantive law.

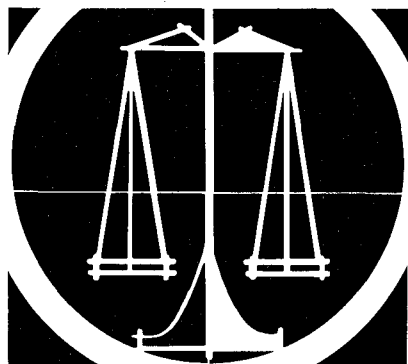
of a Commercial Transactions I exam when he appeared to take the final. After completing the exam, A returned only one copy and kept the other. A retained the exam, for the admitted purpose of filing with the Student Bar Association, even though he knew at the time of appropriating the exam the Professor did not allow his prior exams to be made available to students as study aids.

Defendant A had no apparent need for the exam but admitted that it may be beneficial to other students in the future who would be preparing for this Professor's final exam in Commercial Transactions I.

As misfortune may have it, a number of students for that semester received a "provisional" failure (F) in this course. The "F" grade was subject to change if the unsuccessful student took another exam anytime during the summer, at a time convenient to the Professor, and succeeded in passing the course.

A received a passing grade on the initial exam and consequently did not take the re-examination. However, defendant B in receiving a "provisional" failure, of which he had casually informed A, had decided to take the re-examination during the summer. Shortly after the end of the Spring Semester and upon learning that B was taking the re-examination, A informed B that he had a copy of the most recent Commercial Transactions I exam, and he would mail it to B to use as a study guide. B received the exam in the mail, and later returned it to A upon A's request. A contacted B prior to B's taking the exam upon learning that his acts constituted a possible Honor Code violation. A testified before this Court that a fellow student had informed A that she felt obligated under the Code to contact a member of the Student Bar Association as the whereabouts of the exam and A's purported acts. The exam eventually was sent to the Special Prosecutor's Office and the resulting charges were placed.

The indictment filed by the Special Prosecutor simply charged both A and B with the respective acts of distributing and receiving the Commercial Transactions I exam which constituted dishonorable conduct tending to give B an unfair advantage. A and B were specifically



University of Baltimore School of Law Honor Court Decision

HONOR COURT DECISIONS

No. 76-1E, September 2, 1976

No. 76-2E, September 22, 1976

FENZEL, J.—Two cases were argued before Justices Murphy, Fenzel and Smith of the Evening Division Honor Court. Since the combined actions of the defendants resulted in similar charges being placed, alleging misconduct under the same section of the Honor Code, the Court decided to consolidate its opinion to cover both trials.

Students A and B were both charged with violating sec. 3.03 of the Honor Code (Code) which states that "it shall be a violation of the honor code to engage in any dishonorable conduct which tends to gain an unfair advantage for any student in any academic matter."

The court unanimously found A guilty of violating sec. 3.03 of the Code. Sentence was imposed under 5.01(e) of the Code which was a reprimand not of record. B, however, was found not guilty of any violation.

FACTS

The Open Exam system which is presently in effect at the University of Baltimore is designed so that a student may take any exam for which he or she is scheduled at any of the pre-arranged times during a two-week period. In obtaining an exam, the student presents his or her student I.D. and tells the person distributing the exams the one he or she wishes to take at that time. In the situation presently before the Court, the defendant A inadvertently received two copies

charged with violating section sec. 3.03 of the Evening Division Honor Code.

ISSUES

The main issue to be decided is whether the conduct of the defendants did in fact give an *unfair* advantage to any student.

The prosecution's main contentions were that the acts of A constituted dishonorable conduct because: (1) A, knowing that the Professor of the particular Commercial Transactions I Course did not allow for the dissemination of previous exams to any students, voluntarily gave the exam to B, (2) A knew that B was to take a re-examination of Commercial Transactions I—covering the exact same subject matter as the copy which he had retained, and (3) B was to be the only student, to A's knowledge, who would be able to use the prior exam in preparing for the re-examination.

In a transcribed deposition admitted into evidence by the Court without objection to any answer by defendant A, the prosecution showed by A's admissions, and corroborated by the prosecution's witness, that A did realize that his actions would benefit B only and that the Professor did not allow the use of prior exams as study aids. Since the prosecution had met its burden of proof (i.e. beyond a reasonable doubt) a motion for acquittal by the defendant A was denied.

The defendant A, *per se*, contended that the conduct in question was not dishonorable because he had no specific intent to allow another student to gain an unfair advantage and that no unfair advantage was gained by B since the re-examination did not ask the same specific questions as the exam mailed to B.

The Court concludes, at the close of the defendant's case and upon hearing final arguments by both sides, that the specific act of A, giving B the copy of the Commercial Transactions I exam, constituted dishonorable conduct. Intent is not an element of this section of the Code. The section was designed to encompass a great diversity as to the kinds of activities regulated by the Code. If intent were a requisite element, then obviously this section would be restrictive rather than broad

as the drafters of the Code obviously intended.¹

The fact that B was to be the only student who could avail himself to this prior exam, also considering the absolute policy of the Professor as to the censorship of his previous exams for study aids, and, as adduced from questioning the Professor before this Court, the fact that historically he had used questions or factual situations on previous exams more than once, we conclude that A did violate sec. 3.03 of the Honor Code.

Considering the nature of the offense, evidence of good character of the student and the ultimate advantage which resulted, the student was reprimanded and the contents of the Court file were not to be made a part of A's permanent record.

The Dean of the Law School was to receive a letter as to the findings of the Honor Court.

The prosecution in arguing the case of B likewise contended, *inter alia*, that the receipt of the examination from A was dishonorable conduct. Even though B testified on his own behalf that he was not aware of the Professor's policy as to the

¹ Comments to sec. 3.03 states that "the section was written in recognition that all the conceivable ways in which one student can gain unfair advantage over another cannot be enumerated with detailed specificity. Therefore, the section is a grant of power to the Honor Court to make an *hoc* determinations as to the unfairness of any given student's conduct."

availability of his previous exams, the standard which should be used to gauge the actions of defendants under sec. 3.03, according to the prosecution, is to be an objective reasonable man standard. Therefore, the prosecution claims that B should have known of the Professor's policy, and notwithstanding his ignorance of the policy, the conduct was dishonorable.

The defendant B, with effective assistance of counsel, moved for acquittal before the introduction of any evidence on the grounds that sec. 4.02(b)(1), which required written notice to the defendant prior to the preliminary hearing of the specific charges and course of conduct of which the defendant is accused, had not been strictly followed. The Prosecutor admitted failure to comply with this section.

In denying the motion the Court felt that the failure to comply with sec. 4.02(b)(1) was not prejudicial to the defendant and is not crucial to the disposition of this case. The Court in denying the motion on these grounds did not consider the timeliness of the defendant's objection.

The defendant B admitted that he did receive the exam, but that receipt of such did not constitute dishonorable conduct since he did not have knowledge of the Professor's policy. The defendant also argued that the prosecution did not meet its burden of proof requirement, i.e. beyond a reasonable doubt. Additionally,

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by returning the exam which he received from A well before taking the re-examination, B attempted to show good faith and lack of intent to gain an unfair advantage.

Without deciding all the issues presented to the Court by the prosecution

and defense, the Court holds that the prosecution did not successfully meet its burden of proving beyond a reasonable doubt that B's conduct was dishonorable. Any presumption of dishonorable conduct was erased by B's unassailed testimony

that he did not know of the Professor's restrictive policy as to availability of previous exams at the time of receiving the copy from A.

In conclusion, B was found not guilty of violating sec. 3.03 of the Code.



Lawyer Advertising Given Go-Ahead

by Glenn A. Jacobson

Be it bane or godsend to the legal profession, the Supreme Court has given the green light to the formerly blasphemous practice of lawyers advertising their services. Self-regulation by member-run professional organizations was the traditional means of guaranteeing the public that they would receive good value for their money and quality work when they retained a lawyer. But, the exclusive watchdog function of these organizations has now been eroded by the wave of consumerism. The most recent example of

this trend is the case of *Bates v. State Bar of Arizona*, 97 S.Ct. 2691 (1977).

In 1974, John R. Bates and Van O'Steen, having been members of the Arizona Bar for two years, opened a law practice in Phoenix, Arizona which they referred to as a "legal clinic." A major goal of this practice was "to provide legal services at modest fees to persons of moderate income who did not qualify for governmental legal aid." 97 S.Ct. at 2694.

The clinic accepted only routine matters such as uncontested separations and divorces, personal bankruptcies, name changes, and uncontested adoptions, making extensive use of paralegal assistants and standardized forms to facilitate a quick flow of business.

Two years later, "appellants concluded that their practice and clinical concept could not survive unless the availability of legal services at low cost was advertised and, in particular, fees were advertised." 97 S.Ct. at 2694. On February 22, 1976, Bates and O'Steen placed their advertisement in the *Arizona Republic*, a Phoenix daily newspaper, offering "legal services at very reasonable fees" and listing particular services and corresponding fees.

In response, the President of the Arizona State Bar initiated proceedings against Bates and O'Steen, alleging that their advertisement was in violation of Rule 29(a) of the Supreme Court of Arizona, 17 Arizona Stat. (1976 Supp.), p. 26. The disciplinary rule provides in part:

"(B) A lawyer shall not publicize himself, or his partner, or associate, or any

other lawyer through newspaper ... advertisements. ..."

A three member Special Local Administrative Committee held a hearing, pursuant to Arizona Supreme Court Rule 33, but declined to consider an attack on the validity of the rule. However, the committee did recommend that both Bates and O'Steen be suspended from the practice of law for at least six months. Shortly thereafter, the Board of Governors of the Arizona State Bar, pursuant to Supreme Court Rule 36, reviewed the case and recommended one week suspensions to each appellant.

Bates and O'Steen sought review of the case in the Arizona Supreme Court alleging that the disciplinary rule they had ignored was both violative of the Sherman Anti-Trust Act and an infringement of their First Amendment rights. The Arizona Supreme Court rejected both claims, and the Supreme Court of the United States consented to hear the case. 429 U.S. 813 (1976).

The Supreme Court's decision in the *Bates* case focused on an analysis of the allegation that First Amendment Rights were being interfered with by the continued enforcement of Arizona Supreme Court Rule 20. This analysis is an extension of previous Supreme Court decisions acknowledging First Amendment protection for commercial speech. *Bigelow v. Virginia*, 421 U.S. 809 (1975); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

In *Bigelow*, the managing editor of a Virginia newspaper was found guilty of

Supreme Court Decisions